



VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703)583-3800 FAX (703) 583-3821
www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

Thomas A. Faha
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
VIRGINIA BLACK GRANITE, INC.
FOR
VIRGINIA BLACK GRANITE
VPDES Permit Reg. N° VAG840102**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Virginia Black Granite, Inc., regarding the Virginia Black Granite facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "DMR" means Discharge Monitoring Report.
6. "Facility" or "Site" means the Virginia Black Granite facility located at 12489 Rock Forest Lane, Rapidan, Culpeper County, Virginia 22733, from which discharges of nonmetallic mineral mining process wastewater and stormwater associated with industrial activity occur.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
10. "Permit" means VPDES General Permit No. VAG84, which was previously issued under the State Water Control Law and the Regulation on July 1, 2014, and which expired on June 30, 2019. This Permit was again issued under the State Water Control Law and the Regulation on July 1, 2019, and expires on June 30, 2024. Virginia Black Granite, Inc. applied for registration under the Permit and was issued Registration No. VAG840102 on June 22, 2009.
11. "Registration statement" means a registration statement for coverage under the VPDES General Permit for Nonmetallic Mineral Mining.
12. "Regulation" means the "Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining," 9 VAC 25-190-10, *et seq.*
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
14. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
15. "SWPPP" means Stormwater Pollution Prevention Plan.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.

18. "Virginia Black Granite, Inc." means Virginia Black Granite, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Virginia Black Granite, Inc. is a "person" within the meaning of Va. Code § 62.1-44.3.
19. "VPDES" means Virginia Pollutant Discharge Elimination System.
20. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Virginia Black Granite, Inc. owns and operates the Virginia Black Granite facility located at 12489 Rock Forest Lane, Rapidan, Virginia, which discharges non-metallic mineral mining process wastewater and stormwater associated with industrial activity.
2. The Permit allows Virginia Black Granite, Inc. to discharge non-metallic mineral mining process wastewater and stormwater associated with industrial activity from the Facility to an unnamed tributary of the Rapidan River in strict compliance with the terms and conditions of the Permit.
3. The Rapidan River is listed in DEQ's 305(b) report as impaired for recreational use due to bacterial levels.
4. During a DEQ file review, DEQ staff documented the following compliance deficiencies with respect to the requirements of the Permit:
 - a. The annual DMRs for Outfalls 001, 002, and 003 for the 2016, 2017, and 2018 calendar years had not been received by DEQ.
 - i. Part I.A of the Permit requires that discharge samples be taken and analyzed for the required parameters, and that the results of the sampling be submitted to DEQ in the form of DMRs by the 10th of January for the previous year's sampling results.
5. On May 31, 2019, DEQ staff contacted Virginia Black Granite, Inc. to request additional information regarding the Facility's water use schematic in order to process the registration statement for Permit reissuance during the 2019-2024 permitting period. According to information gleaned from the permittee and their previous contractor, the schematic submitted to DEQ by Virginia Black Granite, Inc. in their registration statement submitted on May 30, 2019, did not reflect current site conditions, nor meet the requirements of the registration statement. The 2014-2019 Permit was administratively continued between the expiration date and the reissuance of the 2019-2024 Permit on December 11, 2019. The information needed to finalize the reissuance was provided to DEQ by Virginia Black Granite, Inc. on November 12, 2019.

- a. Part III.D of the Permit requires that information relevant to the reissuance of a Permit be provided to DEQ within a reasonable timeframe.
6. On August 14, 2019, DEQ staff conducted a reconnaissance inspection of the Facility. During this inspection, the following compliance deficiencies were observed:
- a. Outfalls 001 and 003 were not visible nor accessible, and Facility staff could not locate either outfall.
 - i. Part III.Q of the Permit requires that the permittee properly operate and maintain all facilities and systems of treatment and control.
 - b. Drums of hydraulic fluid were stored outside in a manner that could result in releases to surface waters.
 - i. Part II.H.3.a of the Permit requires the permittee to preserve clean and orderly maintenance of all areas of the facility that may contribute pollutants to stormwater discharges.
 - c. No sampling and analysis records were available for Outfalls 001, 002, or 003.
 - i. Part III.B of the Permit requires that monitoring records include specific descriptive information and be maintained for a period of at least three years.
 - d. No quarterly visual examination records were available for review, and appeared to not have been conducted.
 - i. Part I.A.2.b and Part II.H.3.d.(3) of the Permit require that visual evaluations be documented and maintained on-site with the SWPPP.
 - e. No routine facility inspection reports were available for review, and appeared to not have been conducted.
 - i. Part II.H.3.d.(1) of the Permit requires that personnel who are familiar with the mining activity, the best management practices, and the SWPPP shall conduct routine facility inspections at least quarterly.
 - f. No records of staff SWPPP training was available for review.
 - i. Part II.H.3.e of the Permit requires that employee training on the SWPPP be conducted at least annually.
 - g. The SWPPP was not updated in response to significant construction, deficient compliance evaluations, inspection deficiencies, spills/leaks, or unauthorized

discharges from the site.

- i. Part II.G of the Permit requires that the permittee review and amend the SWPPP as appropriate, including in response to significant construction, deficient compliance evaluations, inspection deficiencies, spills/leaks, or unauthorized discharges from the site.
7. NRO issued Warning Letters and Notices of Violation for the violations noted above as follows: WL No. W2017-02-N-1023, issued February 17, 2017; WL No. W2018-02-N-1012, issued February 13, 2018; WL No. W2019-02-N-1013, issued February 11, 2019; NOV No. W2019-07-N-0005, issued July 24, 2019; and NOV No. W2019-10-N-0005, issued October 22, 2019.
8. On September 13, 2019, Department staff met with representatives of Virginia Black Granite, Inc. to discuss the violations. On October 16, 2019, Aqua Nova Engineering, PLC, on behalf of Virginia Black Granite, Inc., responded to the Warning Letters and Notice of Violation by submitting a plan and schedule of corrective action to address the violations. The plan and schedule are incorporated in Appendix A of the Order.
9. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances
10. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
11. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
12. The Department has issued coverage under no permits or certificates to Virginia Black Granite, Inc. other than under VPDES Permit No. VAG840102.
13. The unnamed tributary of the Rapidan River is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
14. Based on the results of the August 14, 2019, inspection, the September 13, 2019, meeting, and the documentation submitted by Virginia Black Granite, Inc., the Board concludes that Virginia Black Granite, Inc. has violated the Permit, as described in paragraphs C(1) – C(13), above.
15. In order for Virginia Black Granite, Inc. to complete its return to compliance, DEQ staff and Virginia Black Granite, Inc. have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Virginia Black Granite, Inc., and Virginia Black Granite, Inc. agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$9,340.80 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
Execution date + 30 days	\$1,556.80 or balance
+ 60 days	\$1,556.80 or balance
+ 90 days	\$1,556.80 or balance
+ 120 days	\$1,556.80 or balance
+ 150 days	\$1,556.80 or balance
+ 180 days	\$1,556.80 or balance

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Virginia Black Granite, Inc. Within 15 days of receipt of such letter, Virginia Black Granite, Inc. shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Virginia Black Granite, Inc. shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Virginia Black Granite, Inc. shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Virginia Black Granite, Inc. for good cause shown by Virginia Black Granite, Inc., or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Virginia Black Granite, Inc. admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Virginia Black Granite, Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Virginia Black Granite, Inc. declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Virginia Black Granite, Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Virginia Black Granite, Inc. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Virginia Black Granite, Inc. shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Virginia Black Granite, Inc. shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;
and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Virginia Black Granite, Inc. Nevertheless, Virginia Black Granite, Inc. agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Virginia Black Granite, Inc. has completed all of the requirements of the Order;
 - b. Virginia Black Granite, Inc. petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Virginia Black Granite, Inc..

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Virginia Black Granite, Inc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Virginia Black Granite, Inc. and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Virginia Black Granite, Inc. certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Virginia Black Granite, Inc. to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Virginia Black Granite, Inc.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Virginia Black Granite, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 26th day of June, 20 20.



Thomas A. Faha, Regional Director
Department of Environmental Quality

----- (Remainder of Page Intentionally Blank) -----

Virginia Black Granite, Inc. voluntarily agrees to the issuance of this Order.

Date: 4/25/2020 By: EUGENE STEYN, PRESIDENT
(Person) (Title)
Virginia Black Granite, Inc.

Commonwealth of Virginia
City/County of Virginia Beach

The foregoing document was signed and acknowledged before me this 25th day of
April, 2020, by Steyn, Eugene who is
President of Virginia Black Granite, Inc., on behalf of the corporation.

Thelma Wagner Farnam
Notary Public

7551545
Registration No.

My commission expires: Oct 31, 2021

Notary seal:

THELMA WAGNER FARNAM
Notary Public
Commonwealth of Virginia
7551545
My Commission Expires Oct 31, 2021

APPENDIX A SCHEDULE OF COMPLIANCE

1. **Virginia Black Granite, Inc. shall:**

- a. **Outfalls:** By May 31, 2020, submit to DEQ verification (in the form of photographs and work logs) demonstrating completion of modifications to the Facility's sedimentation basins and outfalls.
- b. **SWPPP:** By May 31, 2020, submit to DEQ a copy of the Facility's SWPPP for comment. Virginia Black Granite, Inc. shall respond to any DEQ questions or comments regarding the SWPPP submission within 14 calendar days.
- c. **Training:** Within 30 days of completion, but no later than December 31, 2020, submit to DEQ evidence of the completion of SWPPP-training for Facility staff.
- d. **Housekeeping:** By May 31, 2020, submit to DEQ verification (in the form of photographs and work logs) demonstrating compliance with site housekeeping.
- e. **Routine Inspections:** Submit to DEQ the Facility's routine inspection report for the full quarter following the execution of this Order. This report shall be submitted within 10 days of the end of the quarter, for instance a report for the January – March period shall be submitted to DEQ no later than April 10th.
- f. **Visual Examinations:** Submit to DEQ the Facility's quarterly visual examination report for the full quarter following the execution of this Order. This report shall be submitted within 10 days of the end of the quarter, for instance a report for the January – March period shall be submitted to DEQ no later than April 10th.
- g. **DMRs:** Increase the frequency of discharge monitoring and reporting for Outfalls 001, 002, and 003 to quarterly for the 2020 calendar year. These DMRs shall be submitted to DEQ NRO within 10 days of the end of the monitoring period, for instance a report for the October – December 2020 period shall be submitted to DEQ no later than January 10, 2021.

2. **DEQ Contact**

Unless otherwise specified in this Order, Virginia Black Granite, Inc. shall submit all requirements of Appendix A of this Order to:

**Virginia Department of Environmental Quality
Northern Regional Office
Attn: Enforcement
13901 Crown Court
Woodbridge, VA 22193**